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# **Wresting Governing Authority from the Corporate Class: Driving People into the Constitution**

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By Richard L. Grossman<sup>1</sup>

## **INTRODUCTION**

Millions of people have struggled to implement the grand ideals of liberty and self-governance articulated by the Declaration of Independence and unleashed by the American Revolution. They have always been confronted by a minority enabled by the rule of law. Wielding the armed might and resources of government, this minority enslaved human beings. It deprived people of individual and collective rights. Today, it governs the nation.

In every generation large numbers of people disempowered by the law of the land struggled together to gain their rights and advance their visions for the nation. Knowing this history is essential for people who are today taking their struggles for democracy to the Constitution.

## **CORPORATIONS AS GOVERNING INSTITUTIONS**

By the early twentieth century, men of property had molded the corporation into their political institution of choice. Laws and legal doctrines they had spent years concocting provided the legal power to dictate the majority's labor and vacuum up the nation's wealth. Since then, corporate operatives have wielded this power and wealth to shape public policy and write the law.

What was good for corporations became good for the nation.

So it should be no surprise that communities are constantly defending against the results of taxpayer subsidized (and other) corporate decisions. Some examples include: radiation factories (misnamed nuclear power plants) and constant shipments of radioactive waste; manufacturing and farm corporations poisoning soil, rivers, lakes, and the atmosphere; genetically

engineered seeds; pig genes in fish; vast public funds going to highways, but pennies for trains; denial of the Bill of Rights to workers; global corporate property rights agreements like NAFTA; the USA as the world's number one seller of weapons; the militarization of outer space; a few corporations controlling the people's airwaves, a handful of corporations dominating every industry; many states spending more money for corporatized prisons than for higher education; twenty-five years of stagnant wages; aggressive efforts to corporatize Social Security; employment at will (meaning corporations can fire workers for no reason); public money going to CIA-engineered destabilization and coups in other nations; jobs moved to countries with the lowest wages and the weakest environmental laws; the Wal-Marting of the nation ... *ad infinitum*.

*This is what the majority of people want?*

## HIDDEN HISTORIES

Many state constitutions contain language similar to this: "All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole."<sup>2</sup> Taking these words seriously, abolitionist and women's suffrage movements drove their multi-generational struggles into the Constitution.<sup>3</sup>

In every era, people saw great gaps between democratic rhetoric and reality. During fierce debate over ratification of the nation's plan of governance written in Philadelphia in 1787, Virginia's Patrick Henry declared: "This, sir, is the language of democracy—that a majority of the community have a right to alter government when found to be oppressive. But how different is the genius of your new Constitution from this? How different from the sentiments of freemen, that a contemptible minority can prevent the good of the majority!"<sup>4</sup> John DeWitt of Massachusetts protested: "In short, my fellow citizens, [this Constitution] can be said to be nothing less than a hasty stride to universal empire in this western world, flattering, very flattering to young ambitious minds, but fatal to the liberties of the people."<sup>5</sup>

In 1884, almost 100 years later, the Greenback Party emerging out of growing Populist ferment stated:

We denounce, as dangerous to our republican institutions, those methods and policies of the Democratic and Republican parties which have sanctioned or permitted the establishment of land, railroad, money and other gigantic corporate monopolies; and we demand such governmental action as may be necessary to take from such monopolies the powers they have so corruptly and unjustly usurped, and restore them to the people, to whom they belong.<sup>6</sup>

At the height of Populist organizing in 1892, the People's Party proclaimed: "We believe that the time has come when the railroad corporations will either own the people or the people must own the railroads."<sup>7</sup> Farmers and workers of that era knew what today is hidden history because they or their parents had lived through it. For example, they knew that:

Citizens governed corporations by detailing rules and operating conditions not just in the charters but also in state constitutions and in state laws. Incorporated businesses were prohibited from taking any action which legislators did not specifically allow.

States limited corporate charters to a set number of years. Maryland legislators restricted manufacturing charters to forty years, mining charters to fifty, and most others to thirty years. Pennsylvania limited manufacturing charters to twenty years. Unless a legislature renewed an expiring charter, the corporation was dissolved and its assets were divided among shareholders.

Citizen authority clauses dictated rules for issuing stock, for shareholder voting, for obtaining corporate information, for paying dividends and keeping records. They limited capitalization, debts, land holdings, and sometimes profits. . . . Sometimes the rates which railroad, turnpike and bridge corporations could charge were set by

legislators. . . . Early in the 19th century, the New Jersey legislature declared its right to take over ownership and control of corporate properties. . . . People did not want business owners hidden behind legal shields, but in clear sight. As the Pennsylvania legislature stated in 1834: “A corporation in law is just what the incorporating act makes it. It is the creature of the law and may be moulded to any shape or for any purpose that the Legislature may deem most conducive for the general good.”<sup>8</sup>

Until the last third of the nineteenth century, state legislators limited corporate capital and property holding and years of corporate existence. Corporations were chartered only for specific purposes and forbidden from buying or creating other corporations. States held directors and shareholders liable for harms and debts (especially for money owed to employees) and reserved the right to amend and revoke charters at will. They defined chartering mechanisms as public laws, even as general incorporation laws began to replace legislative chartering.

Within the legal community, it was well understood that corporations were subordinate entities directed to serve the public interest.<sup>9</sup>

Vigorous debates raged in workplaces, village squares, and halls of government about the proper role of corporations and the responsibility of public officials for keeping each one on a short leash. Public discussion became especially heated after each new legislative gift to the corporate class and after each new judicial denial of the people’s authority.

## THE REAL ENRON CORPORATION STORY

To congressional committees, the legal community, and most journalists, the Enron story is about a corporation gone wrong. Many commentators have called for strengthening regulatory agencies, getting money out of politics,<sup>10</sup> and seeking renewed commitments from corporate officials to be socially responsible. Other remedies have focused on new accountancy, securities, pension, and internal corporate transparency rules.

Those who are familiar with the nation's hidden history have a different perspective. They see that it was the rule of law that made it easy for Enron Corporation managers and directors to drive their new ideas about energy into the culture, to rewrite state and federal energy laws, and to dismantle existing systems that Enron's coterie of experts had persuaded public officials were old-fashioned and inefficient. They see that the Constitution as written and amended by the Supreme Court creates barriers against people who oppose Enron-led privatization laws and advocate alternative visions.

Realizing the necessity to build democracy in this country, they understand that reforming regulatory agencies is no means to that end. This is because they have learned through experience that regulatory laws grant governing power and privilege to corporations. Regulatory bodies help corporate officials regulate people.

They believe that other species are demanding that human beings do more than regulate global corporations' destruction of the planet.

When they talk about Enron, they place this public saga in the following historical context: public officials issue a corporate charter in the name of We the People. Officials from other states give the new out-of-state corporation a certificate of authority to operate within their jurisdictions or allow them to do business without such a certificate.

Instantly, human incorporators have at their disposal multiple usurping institutions, called corporations, endowed with constitutional power and legal privilege.

Oregon public officials chartered the principal Enron Corporation during the mid-1990s.<sup>11</sup> In so doing, they gave the Oregon people's seal of approval to thousands of Enron corporate entities chartered earlier in other states and overseas. Like the public officials who preceded them, they bestowed the protection of state and federal law upon a handful of corporate officials manipulating a complex interlocking corporate structure *designed* to keep investors, law enforcement officers, the press, state and federal regulators and the public in the dark . . . *designed* to overpower their human creators.

## HOW COULD THIS HAPPEN?

The way has long been paved. Our Constitution was written to enable a propertied minority to use the rule of law to deprive African Americans, indentured servants, women, Native peoples, and men without property of their fundamental rights. A small class then wielded public law and public resources, plus the legitimacy of government, to accumulate private wealth.

After the Civil War, bitter struggles erupted between states and corporations. Insurance, banking, railroad, grain, land, and other burgeoning corporations hired the most experienced lawyers they could find—including ex-senators and ex-Supreme Court justices.

As Charles McCurdy described:

First, the [Supreme Court] had to be apprised by skillful counsel of the growth-eroding potential of state laws and to be persuaded that new juridical principles must be forged to preserve free trade among the states. Second, the legitimacy of protectionist state legislation had to be challenged by litigants with sufficient resources to finance scores of lawsuits in order both to secure initial favorable decisions and to combat the tendency of state governments to mobilize ‘counterthrusts’ against the Supreme Court’s nationalistic doctrines.<sup>12</sup>

When the briefs had settled, corporate leaders and their lawyers had convinced federal courts:<sup>13</sup>

- To take substantial jurisdiction over corporations from state courts;
- To concoct ‘liberty of contract’ and other doctrines, and reinterpret the commerce clause, severely undermining state authority over corporations;
- To apply the Fourteenth Amendment’s Equal Protection Clause to corporations;
- To transfer the authority to set railroad and utility corporation rates from elected state legislators and state commissions to federal judges;

- To broaden the definition of property to strengthen corporations' governing powers;
- To mid-wife the judicial injunction, which corporate lawyers used to deny the rights of workers and communities seeking to exercise *their* property and other constitutional rights;
- To restrict "corporate law" to internal relationships within the corporate entity, as opposed to the relationship between corporations and the sovereign people who were their creators.<sup>14</sup>

Corporations had also:

- Shaped law school philosophy and curriculum;
- Rewritten legal history;
- Set the stage for creation of federal agencies designed not to challenge corporate constitutional authority, but to serve as barriers against citizen anger and regulate public protest.<sup>15</sup>

The wish lists of nineteenth century corporate directors became this country's sacred legal doctrines.<sup>16</sup>

Ever since, corporate lobbyists have relentlessly pressured state legislatures to rewrite state corporation codes. Carefully couched as "modernization" and "housekeeping" and supported by the American Bar Association, such efforts remain well under the public's radar.<sup>17</sup> Corporate and legislative advocates openly say that the changes are too complicated for ordinary people, not really important, and do not merit public hearings.<sup>18</sup> As a result, state laws that once defined corporations as subordinate and limited have been undone.

Corporate managers act as if they were free to pursue any lawful purpose. As Judge Frank H. Easterbrook and Professor Daniel R. Fischell confirm in their popular textbook, *The Economic Structure of Corporate Law*:

The corporate code in almost every state is an 'enabling' statute. An enabling statute allows managers and investors to write their own tickets, to establish systems of governance without substantive



scrutiny from a regulator. The handiwork of managers is final in all but exceptional or trivial instances.<sup>19</sup>

Shareholders can provide little oversight and correction. First, judges and legislators have been steadily whittling down investors' legal authority over internal corporate matters. Second, shareholders have no legal liability, or even moral responsibility, for the harms to life, liberty, or property that their corporations inflict. In contrast:

Prior to the 1840s, courts generally supported the concept that incorporators were responsible for corporate debts. Through the 1870s, seven state constitutions made bank shareholders doubly liable. Shareholders in manufacturing and utility companies were often liable for employees' wages. . . .

Until the Civil War, most states enacted laws holding corporate investors and officials liable. As New Hampshire Governor Henry Hubbard argued in 1842: "There is no good reason against this principle. In transactions which occur between man and man there exists a direct responsibility—and when capital is concentrated . . . beyond the means of single individuals, the liability is continued."<sup>20</sup>

What about federal law? One class wrote the nation's constitution and has been "interpreting" it on demand ever since using the federal courts, especially the Supreme Court. By this means, a propertied class—then a corporate class—have steadily amended the Constitution with regard to property, labor, commerce, contracts, and corporate personhood.<sup>21</sup>

Although corporate directors do not poll their shareholders about their political views, they nonetheless spend shareholder money to propagandize the body politic. The reality is that the men and women who control corporations dominate the nation's elections, lawmaking, jurisprudence, and education. Federal judges make clear to elected lawmakers in municipalities, states, and Congress that if they prevent corporate managers from spending shareholders' money to influence public debate, help elect favored candi-

dates, or lobby legislators, they would be depriving corporations of their First Amendment constitutional privileges.

## CORPORATIONS RULE OVER US TODAY

Today, it is considered legal, and culturally acceptable, for corporations to endow chairs and special programs in universities,<sup>22</sup> create and fund think tanks,<sup>23</sup> give charitable contributions to secure the silence or the support of civic groups,<sup>24</sup> assist the two dominant political parties to maintain their control over candidates, and generally limit political debate.<sup>25</sup>

Corporations created by corporations—such as the Business Roundtable, the Heritage Foundation, the Chamber of Commerce, the Council on Foreign Relations—dominate the writing of tax, labor, trade, health, environmental, and election laws, along with general debate over domestic and foreign policy. The ideas, values, perspectives, and language of the corporate class dominate news analysis and punditry.<sup>26</sup> Corporations create and lavishly fund “research” and “educational” corporations galore—non-profit corporations that spread their ideas through society.<sup>27</sup>

With paid corporate shills (many in mufti) having infected societal institutions for generations, corporations have no need to “buy” legislators’ votes with campaign contributions. After a century of massive corporate propaganda, and with most of the nation’s institutions (universities, political parties, stock exchanges, large civic organizations) advocating or supporting the dominant corporate perspectives, candidates for the two major parties *could not become candidates* without sharing in the corporate consensus about what’s good for the nation.

Across Republican and Democratic Party lines, there is basic agreement that corporations are the source of jobs, progress, liberty, and security.<sup>28</sup> The economy and the market are regarded as beyond the authority of the people.

The majority of candidates agree with corporate experts about which investments are productive, which are an economic burden; that labor is a cost to be minimized; that workers have no legitimate claims to rights in the workplace; and that pollution costs can be written off as “externalities.” They

know from experience that the corporate class can use law—along with graphic threats of freezing and starving in the dark—to impose its will upon community after community by invoking *jobs and progress*.<sup>29</sup>

Once state public officials launch corporations or accept out-of-state corporations for “any lawful purpose,” directors and managers are free to reign like kings of old. Straddling the First and Fourteenth Amendments—long with the commerce and contracts clauses—they brandish state and federal constitutions against people seeking to protect themselves from corporate assaults and use public education, elections, and lawmaking to meet their needs.<sup>30</sup>

Leaders of giant corporations are trained to know and use their power. When CitiBank and Travelers Insurance company executives decided to merge, they were not deterred by the knowledge that Congress and President Clinton would have to repeal the New Deal era Glass-Steagall Act.<sup>31</sup> They were confident they could accomplish this in short order and they did.<sup>32</sup>

Whether the issue of the moment is food, timber, energy, health care, or production and delivery of goods or services, law and culture proclaim “the corporate way, or the highway.”<sup>33</sup>

Corporate power is more than corporate directors and shareholders being protected by corporate shields. It is the *opposite* of free enterprise and *laissez-faire*—the *opposite* of democracy. As Franklin D. Roosevelt said:

[The] concentration of wealth and power has been built upon other people’s money, other people’s business, other people’s labor. Under this concentration independent business was allowed to exist only by sufferance. It has been a menace to the social system as well as to the economic system which we call American democracy.<sup>34</sup>

## SHIFTING FOCUS TO FUNDAMENTAL LAW

Corporations do not descend from Mars; they are created in our names by the men and women we elect to represent us. Our public officials are the people who have given corporate directors and managers authority to control our lives—just as public officials in the past enabled and empowered

slaveholders and segregationists. As Congressman William Lawrence noted in 1874: “If a state permits inequality in rights to be created or meted out by citizens or corporations enjoying its protection, it denies the equal protection of the laws [to others].”<sup>35</sup>

The armed might of the federal government was committed to slavery, and to crushing slave insurrections.<sup>36</sup> Jim Crow laws also flourished thanks to the rule of law. As W.E.B. DuBois pointed out, elite control of the new wealth generated by the Civil War “was dependent . . . upon the failure of democracy in the South, just as it fattened upon the perversion of democracy in the North.”<sup>37</sup> The new elite began enacting segregation laws to “legally” deprive African Americans of fundamental rights.

What if the armed might of the federal government had not been committed to slavery and to crushing slave insurrections? What if segregationists could not call upon the police, courts, and jails to enforce their poisons?

What if, tomorrow, the law of the land advantaged human, community, and place rights over corporate elites? What if the Constitution empowered people to define corporate institutions as subordinate?

Today, history and logic are compelling people to see that ending corporate assaults on life, liberty, and property requires changing the nation’s constitution. As they become familiar with this history, today’s civic activists are rethinking past efforts and reconsidering goals, strategies, and tactics. They are exploring ways to contest corporate claims to unlawful governing powers—what earlier generations called usurpations. That is why growing numbers of people are turning away from regulatory and administrative agencies and voluntary corporate codes of conduct.

New debates and discussions about history, human rights, consent of the governed, and “[a]ll government of right originates with the people”<sup>38</sup> are arising in institutions across the culture. People are exploring:

- What should be the legal, political and cultural relationships between people and the corporate bodies created in their name? Who decides? How were a minority of natural persons in the original thirteen states

able to define the majority of human beings as non-persons? To define African Americans and indentured servants as property? Native peoples as invisible?<sup>39</sup>

- Why does the General Motors Corporation have more privileges and powers under law than the United Auto Workers Union?<sup>40</sup>
- What is property? Who decides if it is public or private? How did other generations decide?<sup>41</sup>
- What was the Workingmen's Party about? Who were the Knights of Labor, the Populists? Why did they risk their farms and jobs to get corporations out of governance? What happened to them? How did the Progressives help corporate leaders redirect activists away from the constitution and into regulatory arenas?<sup>42</sup>
- Why didn't anti-trust laws and all that trust busting of Theodore Roosevelt and Woodrow Wilson fix everything? Did anti-trust fix anything?<sup>43</sup>
- Why were regulatory and administrative agencies like the Interstate Commerce Commission, the Food and Drug Administration, the Securities and Exchange Commission, the National Labor Relations Board, the Environmental Protection Agency, and the Occupational Safety and Health Administration created? Who wanted them? Who had other ideas about ways the people of this country could make the rules for goods and services, commerce, work, public health? What were they?<sup>44</sup>
- What *is* this country's plan of governance? How is each generation supposed to discover it? To live it?<sup>45</sup>
- Why didn't Tom Paine's *Common Sense* urge people in colonial times to struggle for independence and self-governance?<sup>46</sup>

Over the past few generations, millions of people have formed thousands of civic groups to protest corporate and government assaults and promote their ideas about the kind of nation this could be. Their tactics have appeared to be essentially defensive—to make corporate plans, investments,

technologies, and deeds a little less destructive. But, as Thomas Linzey has explained, behind these defensive efforts:

The citizens of this country during [the twentieth] century have been engaged in passionate and sustained debate about the rights and powers of corporations, on the proper nature of corporations in a democracy, on what should be the relationship between the sovereign people of each state and the fiction which is the modern giant corporation.<sup>47</sup>

People resisting destructive and anti-democratic corporate plans have worked hard to learn technical disciplines such as chemistry, biology, forestry, hydrology, and banking as well as regulatory and administrative law. Now, single-issue civic activists are positioning themselves to challenge public officials who enable the corporate few to use the Constitution and the law to govern. They are studying past peoples' struggles for democracy, corporate history, and constitutional theory.<sup>48</sup>

People are coming together in *Rethinking the Corporation*, *Rethinking Democracy* workshops to explore these and related issues.<sup>49</sup> They are forging creative new campaigns to oppose corporate claims to constitutional authority and confront public officials who have been giving away We the People's right to govern ourselves.

For example, in California, opponents of corporate genetic engineering are making plans to get county and city legislatures to ban such corporate manipulations of the biological building blocks of life. In the process, they will be challenging the past handiwork of judges and legislators. The Women's International League for Peace and Freedom (WILPF) has launched a campaign to contest corporate claims to the constitutional powers of human beings. Union members are exploring ways of driving the Bill of Rights through corporate gates.

In Pennsylvania, people in ten townships have asserted their authority to keep giant corporate hog farms out of their communities by outlawing corporate ownership of farms.<sup>50</sup>

## KEEPING EYES ON THE PRIZE

Abolitionists had to force their struggles into the Constitution because the ownership of humans as property by a privileged class had been imbedded in the Constitution. The women's suffrage movement also had to make the Constitution its political arena—its contested terrain.

Ending corporate dominion in *this* century requires new constitutional doctrines addressing corporations, bankruptcy, commerce, contracts, labor, property, personhood, place, and the rights of other species. People can set such changes in motion by escalating resistance to corporate authority—by withdrawing public consent from Constitution-and-law as usual.

Creative public confrontations can reframe what our corporate culture has defined as defensive struggles into fundamental assertions of We the People's sovereign authority.

Diverse campaigns originating in municipalities and states, if appropriately framed, can expose and intensify the fundamental tension that has characterized this nation's history since the first Europeans stepped on these shores: Who shall govern, the few or the many?

The work, as it was in the great controversies over the colonists' independence from England—just as it was over slavery, segregation, labor and women's rights, and war—will be to get the entire nation to address this tension towards drafting constitutional changes with which the entire society must grapple.

People aspiring to democratic self-governance need to figure out how to advance human rights and earthly sanity in ways which contest corporate claims to governing authority. Activists in communities under the corporate gun, public officials of good will, and supporters in national civic organizations will need to steel themselves against seductive promises of corporate codes of conduct, regulatory reforms, and keener eyeshades for corporate accountants.

The challenge is to reframe popular resistance to corporate rule as struggles for democracy. In the face of corporate calls to police, courts, and militias, these struggles must keep all eyes on the prize: rewriting the fundamental law of the land.

<sup>1</sup> Richard L. Grossman is the co-founder of the Program on Corporations, Law & Democracy (POCLAD). For more information about POCLAD, please visit <http://www.poclad.org>.

<sup>2</sup> MONT. CONST. art II, § 1.

<sup>3</sup> See U.S. CONST. amend. XIII; U.S. CONST. amend. XIV; U.S. CONST. amend. XIX.

<sup>4</sup> THE ANTI-FEDERALISTS 246–47 (Cecelia M. Kenyon ed., 1966).

<sup>5</sup> *Id.* at 104–105.

<sup>6</sup> DONALD BRUCE JOHNSON & KIRK H. PORTER, NATIONAL PARTY PLATFORMS 1840–1972 69 (U. Ill. Press 1973) (1956). Note that urban workers and rural farmers who built the Populist Movement understood “monopoly” to be a *political* term. R. Jeffrey Lustig notes:

In the agrarian tradition, as in the common-law tradition preceding it, a monopoly (like a corporation) was regarded as primarily a political phenomenon. . . . Constituting a branch of sovereignty in the hands of a subject, a monopoly was literally a creature of privilege, of private law . . . In protesting “monopoly,” the Populists were actually identifying a common pattern lying beneath superficially disparate phenomena. The pattern was of corporations gone wrong, of private companies possessing significant powers over the commons . . . .

R. JEFFREY LUSTIG, CORPORATE LIBERALISM: THE ORIGINS OF MODERN AMERICAN POLITICAL THEORY 1890–1920 42–44 (1983).

<sup>7</sup> JOHNSON & PORTER, *supra* note 6.

<sup>8</sup> RICHARD L. GROSSMAN & FRANK T. ADAMS, TAKING CARE OF BUSINESS: CITIZENSHIP & THE CHARTER OF INCORPORATION 8–9 (1993).

<sup>9</sup> A few in today’s legal community are discussing this. See, e.g., *Interview with Lawrence Mitchell, Professor of Law, George Washington University, Washington, D.C.*, CORP. CRIME REP., Dec. 3, 2001, at 10; *Interview with Kent Greenfield, Associate Professor, Boston College Law School, Boston, Massachusetts*, CORP. CRIME REP., Feb. 4, 2002, at 10; *Interview with David Millon, Professor of Law, Washington and Lee University, Lexington, Virginia*, CORP. CRIME REP., Feb. 11, 2002, at 11.

<sup>10</sup> See, e.g., Robert Kuttner & Paul Starr, *The Great Recusal*, AM. PROSPECT, Feb. 25, 2002, at 2.

<sup>11</sup> See *Accord Set in Oregon Utility Merger*, N.Y. TIMES, May 1, 1997, at D6; *Enron Corp.*, WALL. ST. J., June 5, 1997, at C14.

<sup>12</sup> Charles McCurdy, *American Law and the Marketing Structure of the Large Corporation 1875–1890*, 38 J. ECON. HIST. 631, 648 (1978).

<sup>13</sup> See Richard L. Grossman & Ward Morehouse, *Asserting Democratic Control Over Corporations: A Call to Lawyers*, 52 GUILD PRAC. 101, 102 (1995).

<sup>14</sup> *Id.* at 103.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See The Committee on Corporate Laws, *Other Constituencies Statutes: Potential for Confusion*, 45 BUS. LAW. 2253, 2253 (1990).

<sup>18</sup> See Richard L. Grossman, *The Corporate Crunch in Vermont*, in DEFYING CORPORATIONS, DEFINING DEMOCRACY 116, 117 (Dean Ritz ed., 2001); Richard L. Grossman, *A Quick Look at What Happened in New Mexico*, in DEFYING CORPORATIONS, DEFINING DEMOCRACY 124 (Dean Ritz ed., 2001); Greg Coleridge, *Wrong Turn in Ohio*, in DEFYING CORPORATIONS, DEFINING DEMOCRACY 121 (Dean Ritz ed., 2001).

<sup>19</sup> FRANK H. EASTERBROOK & DANIEL R. FISCHELL, THE ECONOMIC STRUCTURE OF CORPORATE LAW 18 (1991).



<sup>20</sup> GROSSMAN & ADAMS, *supra* note 8, at 10.

<sup>21</sup> The number of cases and articles confirming this point are too numerous to count.

<sup>22</sup> See Daniel Altman, 'Enron Professor of Economics' Has a New Ring Now, N.Y. TIMES, Feb. 3, 2002, at A7 ("Arthur Andersen, Enron and even Kenneth L. Lay, Enron's former chief executive, opened their wallets for academia. All three have endowed professorships—Andersen alone has 40–50.").

<sup>23</sup> See *Ken Lay's Good Works*, THE NATION, Feb. 11, 2002, at 7, 7. Ken Lay, a board member and funder of the conservative American Enterprise Institute, financed a chair at the corporate think tank Resources For the Future (RFF). "Lay's gift to RFF, according to the group's newsletter, was to underwrite research 'to improve the way decision-makers consider important issues on the top of the nation's policy agenda.'" See also GEORGE DRAFFAN, THE CORPORATE CONSENSUS (2001).

<sup>24</sup> See Nate Blakeslee, *A Naked Emperor Disrobed: Or, How Enron Did Texas*, THE NATION, Mar. 4, 2002, at 15.

<sup>25</sup> For example, presidential debates during the 2000 elections, with funding provided by Anheuser-Busch and other corporations, were run by a corporation established by leaders of the Republican and Democratic Parties. Not coincidentally, the debate corporation excluded Ralph Nader and other presidential candidates from its Gore vs. Bush shows. See RALPH NADER, CRASH!ING THE PARTY: HOW TO TELL THE TRUTH AND STILL RUN FOR PRESIDENT 58, 159 (2002).

<sup>26</sup> A study by the Project for Excellence in Journalism found that straight factual reporting dropped to 63% of coverage in November and December [2001], from 75% in mid-September. The remainder of the coverage is analysis, opinion and speculation . . . the range of viewpoints Americans are offered is remarkably limited. Less than 10% of the coverage evaluating administration policy offers significant dissent. Most contains no dissent at all.

Bill Kovach & Tom Rosensteil, *In Wartime, the People Want the Facts*, N.Y. TIMES, Jan., 29, 2002, at A21. See also Stephen Labaton, *Technology: Congressional Broadband Fight Intensifies*, N.Y. TIMES, Feb. 27, 2002, at C4 ("Two weeks after the House of Representatives approved legislation to limit the influence of money in politics, the House is expected to approve a telecommunications bill that is largely shaped by the huge campaign contributions it has generated.").

<sup>27</sup> Referring to the Tobacco Institute and the Council For Tobacco Research, New York's Attorney General explained that "the goal of these organizations and of their incorporators was to serve as industry shills to promote the pecuniary interests of the tobacco industry." Memorandum of Law in Support of Petition for Dissolution at 29, *Vacco v. Council for Tobacco Research* (N.Y. App. Div. 2000) (No. 107479/98).

<sup>28</sup> As long as the corporate class is enriched by public wealth and empowered by public law.

<sup>29</sup> See RICHARD KAZIS & RICHARD L. GROSSMAN, *FEAR AT WORK: JOB BLACKMAIL, LABOR & THE ENVIRONMENT* (1991).

<sup>30</sup> During the campaign for San Francisco's November 2001 ballot measure on municipalization of electrical generation and delivery, Pacific Gas & Electric Corporation (PG & E) used its Supreme Court bestowed First Amendment powers to spend millions of shareholder and ratepayer dollars to defeat this public vote. Those expenditures came on the heels of past efforts to discredit ideas about ownership and control arrangements, which PG & E and other corporate operatives opposed by giving charitable contributions to civic groups, by making campaign contributions to candidates, and by funding think tanks and shill propaganda corporations. See, e.g., *San Francisco Voters Defeat Two Measures About Energy*, N.Y. TIMES, Nov. 12, 2001, at A14.

<sup>31</sup> See, e.g., Joseph Kahn, *A New Financial Era: The Impact; Financial Services Industry Faces a New World*, N.Y. TIMES, Oct. 23, 1999, at C1.

<sup>32</sup> *Id.*

<sup>33</sup> See KAZIS & GROSSMAN, *supra* note 29.

<sup>34</sup> 5 SAMUEL I. ROSENMAN, PUBLIC PAPERS AND ADDRESSES OF FRANKLIN ROOSEVELT 487–88 (1938).

<sup>35</sup> HOWARD J. GRAHAM, EVERYMAN'S CONSTITUTION 200 (1968).

<sup>36</sup> U.S. CONST. art. I, § 8, cl. 15.

<sup>37</sup> W.E.B. DUBOIS, BLACK RECONSTRUCTION IN AMERICA 308 (Atheneum 1975) (1935).

<sup>38</sup> MONT. CONST. art II, § 1.

<sup>39</sup> RICHARD L. GROSSMAN, *Introduction*, in DEFYING CORPORATIONS, DEFINING DEMOCRACY 3 (Dean Ritz ed., 2001).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 3–4.

<sup>45</sup> *Id.* at 4.

<sup>46</sup> *Id.*

<sup>47</sup> Brief in Support of Motion for Peremptory Judgment, Community. Envtl. Legal Def. Fund v. Thomas Corbett, Attorney General of Pa. (Commonw. Ct. of Pa. 1996) (Civ. No. 1074 M.D.).

<sup>48</sup> See DEFYING CORPORATIONS, DEFINING DEMOCRACY (Dean Ritz ed., 2001); PETER KELLMAN, BUILDING UNIONS: PAST, PRESENT & FUTURE (2001); Ruth Conniff, *The Progressive Interview*, THE PROGRESSIVE, Mar. 2002, at 32; *Interview with Richard Grossman, Program on Corporations, Law and Democracy, South Yarmouth, Massachusetts*, CORP. CRIME. REP., Feb. 18, 2002, at 10.

<sup>49</sup> POCLAD regularly sponsors these kinds of workshops.

<sup>50</sup> A November 2001 lawsuit filed in Pennsylvania against one of the local governments reveals the predictable corporate position:

“The township does not have the authority . . . to prohibit or regulate corporate ownership of farmland or farming communities. . . . Giving preference to ‘family’ farmers and banning ‘corporate’ farming violates the Pennsylvania and United States constitutions in several respects, including without limitation, equal protection, due process, taking without just compensation, and rights guaranteed under the commerce clauses.”

Plaintiff's Amended Complaint at 5, *Leese v. Belfast Township Bd. of Supervisors* (C.P. Northampton County filed Mar. 27, 2002) (No. 304 of 2001-C 2001). This lawsuit is paid for by the PennAg Industries Association. See Tom Avril, *Mass Pig Pens: Good Farming Or Bad Practice*, PHILADELPHIA INQUIRER, Mar. 18, 2002, at A1.